

AMENDED IN ASSEMBLY JULY 15, 2004

AMENDED IN SENATE MAY 5, 2004

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1731

Introduced by Senator Romero

February 20, 2004

An act to amend Section 6129 of, and to add Section 6130 to, the Penal Code, relating to corrections.

LEGISLATIVE COUNSEL'S DIGEST

SB 1731, as amended, Romero. Corrections: investigations: disclosure.

Existing law establishes the Office of the Inspector General for specified purposes related to audits and investigations of the Department of Corrections, the Department of the Youth Authority, and certain other entities involved in corrections. Existing law requires the Inspector General and certain of these correctional entities to refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action.

~~Existing law provides that these provisions shall not preclude the Inspector General from following all applicable laws regarding confidentiality. Existing law provides that it is a misdemeanor for the Inspector General or an employee of the Inspector General to release any information received in connection with the exercise of the Inspector General's duties except as provided by the provisions of law regarding the Inspector General, or to release any information that is otherwise prohibited by law from being disclosed.~~

~~This bill would, in addition, prohibit any of these instead require specified correctional entities required to refer criminal matters to law enforcement authorities the district attorney in the appropriate jurisdiction, make available all evidence gathered, and cooperate with any further investigation of the matter by the district attorney. This bill would prohibit these entities from otherwise disclosing or entering into an officer's employee's personnel file, any official information gathered during an investigative process that is deemed to be confidential or privileged under any other provision of law, including, but not limited to, any specified inmate complaint and any witness statement, audiotape, or videotape related to that complaint. The bill would make a clarifying change to this provision. By restricting the circumstances under which this information may be disclosed by the Inspector General, the bill would expand the scope of an existing crime, and would thereby impose a state-mandated local program.~~

This bill would set forth legislative findings, declarations, and intent relating to the provisions of the bill.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: ~~yes~~-no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature hereby finds and declares
- 2 the following:
- 3 (1) There are numerous state statutes that protect the
- 4 confidentiality of criminal investigative materials and prescribe
- 5 the exclusive means by which a defendant in criminal cases can
- 6 obtain discovery.
- 7 (2) These provisions of state law constitute a statutory scheme
- 8 that protects the confidentiality of material collected during a
- 9 criminal investigation and provides the time and means by which
- 10 that material is provided to a criminal defendant.
- 11 (3) Section 9.09 of Article IX of the Memorandum of
- 12 Understanding for Bargaining Unit 6 (Corrections) (hereafter

1 MOU) conflicts with state policy as expressed in statutes that
2 protect the confidentiality of criminal investigative materials, and
3 provides for the production of that material to a criminal
4 defendant.

5 (4) Specifically, investigators conducting an ongoing criminal
6 investigation are seemingly compelled under subdivision D of
7 Section 9.09 of Article IX of the MOU to immediately turn over
8 confidential statements obtained in the course of that investigation
9 to criminal suspects and witnesses upon request, thus
10 compromising the integrity of that investigation.

11 (5) The successful prosecution of correctional officers
12 represented by Bargaining Unit 6 who violate the law is critical to
13 ensure the integrity of the California Department of Corrections
14 and the California Youth Authority.

15 (6) Although certain provisions of the MOU may supersede
16 other sections of law if specifically enumerated and subsequently
17 enacted by the Legislature, none of the MOU sections dealing with
18 the confidentiality of investigative materials and criminal
19 discovery were so enumerated or enacted.

20 (7) Furthermore, the “savings clause” of Section 5.02 of
21 Article V of the MOU contemplates the invalidation of any
22 provision of the MOU by enactment of subsequent legislation by
23 the Legislature.

24 (b) It is, therefore, the intent of the Legislature by enacting this
25 act to invalidate subdivision D of Section 9.09 of Article IX of the
26 MOU and any other section of the MOU that compels the
27 production of confidential information collected during the course
28 of an investigation and that is in conflict with statutes that protect
29 the confidentiality of that material or provides for the production
30 of that material to a criminal defendant.

31 SEC. 2. Section 6129 of the Penal Code is amended to read:

32 6129. (a) (1) For purposes of this section, “employee”
33 means any person employed by the Youth and Adult Correctional
34 Agency, the Department of Corrections, the Department of the
35 Youth Authority, the Board of Corrections, the Board of Prison
36 Terms, the Youthful Offender Parole Board, or the Inspector
37 General.

38 (2) For purposes of this section, “retaliation” means
39 intentionally engaging in acts of reprisal, retaliation, threats,

1 coercion, or similar acts against another employee who has done
2 either of the following:

3 (A) Has disclosed or is disclosing to any employee at a
4 supervisory or managerial level, what the employee, in good faith,
5 believes to be improper governmental activities.

6 (B) Has cooperated or is cooperating with any investigation of
7 improper governmental activities.

8 (b) (1) Upon receiving a complaint of retaliation from an
9 employee, the Inspector General may commence an investigation.

10 All investigations conducted pursuant to this section shall be
11 performed, where applicable, in accordance with the requirements
12 of Chapter 9.7 (commencing with Section 3300) of Title 1 of
13 Division 4 of the Government Code.

14 (2) When investigating a complaint, in determining whether
15 retaliation has occurred, the Inspector General shall consider,
16 among other things, whether any of the following either actually
17 occurred or were threatened:

18 (A) Unwarranted or unjustified staff changes.

19 (B) Unwarranted or unjustified letters of reprimand or other
20 disciplinary actions, or unsatisfactory evaluations.

21 (C) Unwarranted or unjustified formal or informal
22 investigations.

23 (D) Engaging in acts, or encouraging or permitting other
24 employees to engage in acts, that are unprofessional, or foster a
25 hostile work environment.

26 (E) Engaging in acts, or encouraging or permitting other
27 employees to engage in acts, that are contrary to the rules,
28 regulations, or policies of the workplace.

29 (3) Upon authorization of the complainant employee, the
30 Inspector General may release the findings of the investigation of
31 alleged retaliation to the State Personnel Board for appropriate
32 action.

33 (c) Any employee at any rank and file, supervisory, or
34 managerial level, who intentionally engages in acts of reprisal,
35 retaliation, threats, coercion, or similar acts against another
36 employee, pursuant to paragraph (2) of subdivision (a), shall be
37 disciplined by adverse action as provided in Section 19572 of the
38 Government Code. If no adverse action is taken, the State
39 Personnel Board shall invoke adverse action proceedings as
40 provided in Section 19583.5 of the Government Code.

(d) (1) In addition to all other penalties provided by law, including Section 8547.8 of the Government Code or any other penalties that the sanctioning authority may determine to be appropriate, any state employee at any rank and file, supervisory, or managerial level found by the State Personnel Board to have intentionally engaged in acts of reprisal, retaliation, threats, or coercion shall be suspended for not less than 30 days without pay, and shall be liable in an action for damages brought against him or her by the injured party. If the State Personnel Board determines that a lesser period of suspension is warranted, the reasons for that determination must be justified in writing in the decision.

(2) Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If liability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.

(e) Nothing in this section shall prohibit the employing entity from exercising its authority to terminate, suspend, or discipline an employee who engages in conduct prohibited by this section.

(f) Upon the completion of any investigation, the Inspector General shall prepare a written report, which shall be held as confidential and disclosed in confidence, only to the Secretary of the Youth and Adult Correctional Agency, the Governor, and the appropriate director or law enforcement agency. A summary of the report's findings and conclusions shall be made available, upon request, to the person who requested the investigation, the person or persons who were the subjects of the investigation, and to any Member of the Legislature.

(g) Nothing in this section shall preclude the office of the Inspector General from following all applicable laws regarding confidentiality, including, but not limited to, the California Public Records Act, the Public Safety Officers Procedural Bill of Rights, the Information Practices Act of 1977, the Confidentiality of Medical Information Act, and the provisions of Section 832.7 relating to the disposition notification for complaints against peace officers.

SEC. 3. Section 6130 is added to the Penal Code, to read:

6130. (a) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, ~~and the Board of Prison Terms shall refer,~~

1 *and all of their subordinate employing entities shall immediately*
2 *inform the Inspector General of all matters involving employee*
3 *criminal conduct to the proper law enforcement authorities and*
4 *shall refer those matters to the district attorney in the appropriate*
5 *jurisdiction for further action.*

6 (b) The referring entity specified in subdivision (a) is subject
7 to the following conditions:

8 (1) ~~(A) Except as provided in subparagraph (B) paragraph~~
9 ~~(2), the referring entity shall not disclose, or enter into an officer's~~
10 ~~employee's personnel file, any official information gathered~~
11 ~~during an investigative process that is deemed to be confidential~~
12 ~~or privileged under any other provision of law, including, but not~~
13 ~~limited to, any inmate complaint made on CDC Form 6502 602~~
14 ~~pursuant to Article 8 (commencing with Section 3084) of Chapter~~
15 ~~1 of Division 3 of Title 15 of the California Code of Regulations~~
16 ~~and any witness statement, audiotape, or videotape related to that~~
17 ~~complaint.~~

18 ~~(B) Notwithstanding subparagraph (A), the~~

19 ~~(2) The referring entity shall make available to law~~
20 ~~enforcement authorities those law enforcement authorities that~~
21 ~~have received referrals all information and evidence gathered~~
22 ~~during the investigative process and shall cooperate with any~~
23 ~~further investigation by those authorities.~~

24 ~~(2) (A) The entity making a referral to the local district~~
25 ~~attorney shall also notify the Attorney General of the action.~~

26 ~~(B) If the local district attorney refuses to accept the case, he or~~
27 ~~she shall notify the referring entity who shall subsequently refer~~
28 ~~the matter to the Attorney General.~~

29 ~~(C) If the local district attorney has not acted on the matter, the~~
30 ~~referring entity shall notify the Attorney General.~~

31 ~~(e) (1) It is the intent of the Legislature that this section shall~~
32 ~~apply to criminal conduct on the part of the staff of the Youth and~~
33 ~~Adult Correctional Agency and not to criminal conduct on the part~~
34 ~~of inmates.~~

35 ~~(2) It is the intent of the Legislature that the Department of~~
36 ~~Justice avoid any conflict of interest in representing the State of~~
37 ~~California in any civil litigation that may arise in a case in which~~
38 ~~an investigation has been or is currently being conducted by the~~
39 ~~Bureau of Investigation by contracting when necessary for private~~
40 ~~counsel.~~

1 ~~SEC. 4.—No reimbursement is required by this act pursuant to~~
2 ~~Section 6 of Article XIII B of the California Constitution because~~
3 ~~the only costs that may be incurred by a local agency or school~~
4 ~~district will be incurred because this act creates a new crime or~~
5 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
6 ~~for a crime or infraction, within the meaning of Section 17556 of~~
7 ~~the Government Code, or changes the definition of a crime within~~
8 ~~the meaning of Section 6 of Article XIII B of the California~~
9 ~~Constitution.—~~

